# In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 966

UNITED STEELWORKERS OF AMERICA, ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

At the direction of the President of the United States, the Acting Attorney General brought suit under the National Emergency provisions of the Labor-Management Relations Act of 1947, 61 Stat. 155, as amended, 29 U.S.C. 176–180, for an injunction against the continuation of a strike by the United Steelworkers of America at the Stellite Division (Kokomo, Indiana) plant of Union Carbide Corporation.[1] Before directing commencement of this suit, the President had determined (following the report of a

[1] The government did not seek to enjoin strikes by petitioners at ten other Union Carbide plants, commenced simultaneously with the instant strike on September 29, 1966.



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Board of Inquiry appointed by him, pursuant to Section 206 of the Act, 29 U.S.C. 176, which found that early settlement of the labor dispute was unlikely) that the strike "affects a substantial part of the military aircraft engine industry of the United States * * * [and], if permitted to continue, will imperil the national safety."

The district court was authorized by the Labor-Management Relations Act of 1947 to enjoin the continuation of the strike upon finding that it

> (i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and
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> (ii) if permitted to occur or to continue, will imperil the national health or safety * * *. [Section 208(a), 29 U.S.C. 178(a).]

On December 21, 1966, the court found that the strike at the Stellite Division "will affect a substantial part of the military aircraft engine industry" and "will imperil the national safety, and thereby cause irreparable damage and injury to the United States, for which there is no adequate remedy at law" (App., *infra*, 13, 16). Accordingly, it issued a preliminary injunction against continuation of the strike.[2] On December 22, 1966, in the course of oral argument on

[2] Under the Act, the injunction remains in effect at most for eighty days. 29 U.S.C. 179(b), 180. During that period, the union and employer have the "duty * * * to make every effort to adjust and settle their differences, with the assistance of the [Federal Mediation and Conciliation] Service * * *." 29 U.S.C. 179(a).

petitioners' motion to the court of appeals for a stay of the injunction pending appeal, the parties stipulated that the court consider the case on its merits, and on December 23, 1966, the District of Columbia Circuit (per Judges Fahy, McGowan, and Leventhal), agreeing with the district court's findings and conclusions, affirmed the issuance of the injunction (Pet. App. 39).

The court of appeals rejected petitioners' principal argument—that there is no separate military aircraft engine industry apart from the general aircraft engine industry and that therefore the district court's findings that the strike (in the language of the Act) "affects an entire industry or a substantial part thereof" was unsupported by the record. The court further held, in accordance with the decision of the Second Circuit in *United States* v. *United Steelworkers of America*, 202 F. 2d 132, certiorari denied, 344 U.S. 915, that injunctive relief under the Act is available even though the industry affected by the strike (in this case the military aircraft engine industry) is not the industry in which the striking employees are immediately engaged (the metal alloys industry).

Petitioners challenge the factual findings of both courts below—in full agreement with prior findings of the President of the United States[3]—that the

[3] The concurring opinion of Justices Frankfurter and Harlan in *United Steelworkers of America* v. *United States*, 361 U.S. 39, points out that (*id.*, at 48): "[U]nder § 208 the trier of these facts was called upon to make a judgment already twice made by the President of the United States: once when he convened

strike at the Stellite Division affects a substantial part of an industry. They also seek review of the ruling that a strike may be enjoined under the Act even though the industry that it "affects" is not the immediate one in which the strike has occurred.[4] The correctness of factual findings concurred in by two courts below does not warrant re-examination by this Court. *Graver Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275. At all events, the decision below is supported by the evidence, is plainly correct, and is not in conflict with the decision of any other court. There is accordingly no basis for further review.

It is undisputed that, if permitted to continue, the strike at the Stellite Division of Union Carbide Cor-

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the Board of Inquiry; and once when he directed the Attorney General to commence this action. His reasoned judgment was presumably based upon the facts we have summarized, and it is not for us to set aside findings consistent with them. The President's judgment is not controlling; § 208 makes it the court's duty to 'find' the requisite jurisdictional fact for itself. But in the discharge of its duty a District Court would disregard reason not to give due weight to determinations previously made by the President, who is, after all, the ultimate constitutional executive repository for assuring the safety of the Nation, and upon whose judgment the invocation of the emergency provisions depends."

[4] Petitioners further urge (Pet. 20) that the President had available means other than the National Emergency provisions of the Labor-Management Relations Act for securing the material manufactured by the Stellite Division (citing Section 18 of the Selective Service Act of 1948, 50 U.S.C. App. 468; Defense Production Act of 1950, 50 U.S.C. App. 2071) and presumably, therefore, should not have followed the course he chose. There is, however, no indication in any of those statutes that Congress intended the President to exhaust his powers under the Selective Service Act and/or Defense Production Act before resorting to the National Emergency provisions.

poration would have "imperil[ed] the national health or safety" (29 U.S.C. 178(a)(ii)). As both courts below found: *First*, the Stellite Division is the major producer of a high temperature, special purpose metal alloy (Hastalloy X) which is essential to the fabrication of engines and spare parts for aircraft (the F–4, the RF–4, and the F–104) in constant use by the Navy and Air Force in combat and reconnaissance operations in Southeast Asia. Since the only other producer of this alloy is supplying other priority requirements, no other source is available and existing stocks would soon be depleted if the strike were to continue. *Second*, the Stellite Division produces turbine blades which are an essential part of the engines for helicopters used extensively by the Marine Corps in Southeast Asia combat operations (the CH–53 and CH–46), and by the Navy in antisubmarine warfare programs (the SH3D). There is no alternative source for the castings for these blades which can maintain existing production schedules of the manufacturer making these engines and spare parts for the engines currently in use in Southeast Asia. *Third*, the Stellite Division supplies certain first and second stage turbine blades and vanes for the engines powering the helicopters (the UH–1 and CH–47) which form a vital part of the Army's combat force in Southeast Asia. Since no other source can meet these requirements, the strike had resulted in inadequate stocks of blades and vanes to permit the rebuilding of worn and combat-damaged engines in Southeast Asia and to maintain production schedules of new engines.

Petitioners dispute the findings of the district court and the court of appeals that a substantial part of an industry was affected by the strike at the Stellite Division. However, their claim that there is no industry identifiable as the *military* aircraft engine industry ignores the evidence and reality. A table of the Bureau of the Census' *1963 Census of Manufactures*, introduced in evidence below, indicates that more than 83 percent of the total dollar value of shipments of aircraft engines and parts is made to the Department of Defense and NASA, principally the former. Moreover, as the court of appeals noted, petitioners' affidavits concede that 23 percent of all aircraft engines produced in the United States are for military purposes and 29 percent of all employees engaged in the aircraft engine industry work on military shipments (Pet. App. 42, n. 1). In view of this evidence, the finding of both courts below that there is a military aircraft engine industry is, we submit, plainly correct.

It is equally clear that the strike at the Stellite Division, in the language of the Act, "affects * * * a substantial part" of the military aircraft engine industry. Petitioners conceded, as the court of appeals pointed out, "that the strike in issue may affect as many as 16,500 workers, representing 13% of the total industry [*i.e.*, the entire aircraft engine industry, including the military aircraft engine industry]" (Pet. App. 42–43, n. 1). Plainly, therefore, a very substantial number of persons and financial resources would be affected were this strike permitted to continue. But the courts below were not required to identify in

precise terms the value of human and monetary resources engaged in the production of military aircraft engines and parts for such engines, and then to compute to the decimal point the percentage of total resources affected if the strike were permitted to continue. Rather, as the court of appeals concluded (Pet. App. 43–44):

> [I]n the light of what is common knowledge of the magnitude of the effort this nation is being called upon to make in Southeast Asia, it is impossible to read what is in this record of the types and functions of the aircraft involved without concluding that their availability in adequate numbers to every branch of the armed services rests upon a resource commitment of a very substantial nature indeed. Our industrial might—in aircraft engine manufacture as elsewhere—is great, but it is not unlimited. We would over-estimate it sadly if we were to conclude, on this record, that an effort of very substantial proportions is not required of the military engine aircraft industry to keep these planes and helicopters moving steadily to the area of critical need.

Petitioners further argue that injunctive relief is authorized by the Act only if the "entire industry or a substantial part thereof" which the strike "affects" (29 U.S.C. 178) is the immediate industry in which the strike occurs (Pet. 13, 22). This argument has been correctly rejected by both of the courts of appeals that have considered the question. As the Second Circuit pointed out in *United States* v. *United Steelworkers of America, supra*, 202 F. 2d 132, 137,

arguments of this nature ignore the language used by Congress in the statute:

> By using "affects" instead of some more confining word as regards the strike or lock-out which might be enjoined it made, we think, the test of applicability not merely the extent of the strike within an industry but the extent of the effect of a strike upon an industry and the national health or safety. Such a construction is in accord not only with the usual meaning of the words used but also with the purpose and policy of the entire statute * * *. [See, to the same effect, the opinion of the court of appeals in the present case (Pet. App. 42).]

Had Congress intended the statute to be read as authorizing an injunction only if the strike "affects *the entire industry in which the strike or lock-out is threatened or has occurred* or a substantial part thereof" it would have written the statute in those terms. Congress did not so provide; it said instead that the strike may be enjoined if it "affects an entire industry or a substantial part thereof."[6] Applying, as the courts

[6] In view of this plain statutory language, petitioners' extensive discussion of legislative history (Pet. 22–29) has little significance. See, *e.g.*, *Ex parte Collett*, 337 U.S. 55, 61. In any event, the bulk of the material cited is inapposite since it deals not with the question at hand but with the varying views of the legislators as to whether a strike to be enjoined must be nation-wide. And Senators Taft, Ball, and Smith, whose statements petitioners quote, were not speaking for the majority of the Senate Committee or the Senate. Their view—that the question of national emergency strikes was principally one of nation-wide strikes caused by industry-wide bargaining and could, therefore, be controlled by placing restrictions on industry or nation-wide bargaining—failed to carry either the Committee or the Senate. See S. Rep. No. 105, 80th Cong., 1st Sess., Suppl. views, pp. 50, 51, 56; 93 Cong. Rec. 4676.

below did, the plain language of the Act, the strike involved in this case was covered.[6]

For the foregoing reasons, the petition for a writ of certiorari should be denied.[7]

Respectfully submitted.

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JANUARY 1967.

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[6] Apart from its irrelevance, there is no substance to petitioners' suggestion (Pet. 21) that the employees of the Stellite Division necessarily will be subject during the term of the injunction to the terms of the expired contract. It is possible that the new contract between petitioners and Union Carbide, when executed, will provide for a retroactive application of its terms and conditions.

[7] If, contrary to our submission, this Court grants a writ of certiorari, we have no objection to an accelerated schedule of briefing and argument, as requested by petitioners (Pet. 1–2, 36.)

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# APPENDIX

In the United States District Court for the District of Columbia

CIVIL No. ——

UNITED STATES OF AMERICA, PLAINTIFF,

*v.*

UNION CARBIDE CORPORATION, A NEW YORK CORPORATION; UNITED STEELWORKERS OF AMERICA, AFL–CIO; LOCAL 2958, UNITED STEELWORKERS OF AMERICA, AFL–CIO, DEFENDANTS

*Findings of Fact and Conclusions of Law*

This cause having come on for hearing on the motion of the plaintiff for a preliminary injunction, as prayed for in its verified complaint, and the Court having considered all evidence submitted herein, the pleadings, memoranda of law, and arguments of counsel, make the following Findings of Fact and Conclusions of Law with respect to said application.

FINDINGS OF FACT

1. On or about September 30, 1966, certain employees of the Union Carbide Corporation (hereinafter referred to as "the Corporation") and represented by the following labor organizations:

United Steelworkers of America, AFL–CIO
Local 2958, United Steelworkers of America,

AFL-CIO (hereinafter referred to as the Union defendants)

commenced a strike against the Corporation.

2. The strike results from an unresolved labor dispute and will be, if permitted to continue, a concerted work stoppage and not the exercise of the rights of individual employees to quit their labor, as provided in Section 502 of the Labor Management Relations Act, 1947.

3. On December 19, 1966, the President of the United States acting under the provisions of Section 206 of the Act (29 U.S.C. 176), issued Executive Order No. 11321, whereby he appointed a Board of Inquiry to inquire into the issues involved in said labor dispute. In said Executive Order the President expressed the opinion that such dispute had resulted in a strike which, if permitted to continue, would affect a substantial part of the military aircraft engine industry, an industry engaged in trade, commerce, transportation, transmission or communication among the several States and with foreign nations, or engaged in the production of goods for commerce, and that such strike, if permitted to continue will imperil the national safety.

4. The Board of Inquiry so convened by the President inquired into the issues involved in the dispute and rendered its written report to the President.

5. Upon receipt of the report, the President, on December 21st, 1966, directed the Attorney General, pursuant to the provisions of Section 208 of the Act, to petition in the name of the United States any district court of the United States having jurisdiction of the parties to enjoin the strike, and for such other relief as may be necessary or appropriate.

6. Thereupon, on December 21st, 1966, the Attorney

General brought this action on behalf of the United States of America.

7. This suit was instituted under the National Emergencies provisions of the Act, Sections 206–210 (29 U.S.C. 176–180).

8. Copies of the verified complaint and annexed affidavit of the Deputy Secretary of Defense, together with copies of the Plaintiff's Motion for a Preliminary Injunction and supporting memorandum of law were served upon all defendants, who accepted service.

9. The threatened strike, if permitted to continue, will affect a substantial part of the military aircraft engine industry, which industry is engaged in trade, commerce, transportation, transmission or communication among the several States and with foreign nations, or in the production of goods for commerce.

10. The strike, if permitted to continue, will affect the National Safety, as follows:

(*a*) A customer of the Union Carbide Corporation is the sole producer of engines and certain spare parts for the F–4 (Phantom), the RF–4 (a reconnaissance version of the F–4) and the F–104 aircraft. The F–4, used by both the Navy and the Air Force is the most modern tactical fighter available to our fighting forces today, and has been assigned to combat operations in Southeast Asia under the highest priority and is in constant and ever-increasing use to perform a variety of combat missions such as strafing and bombing. The F–104 is a high altitude fighter cover aircraft and is also in constant use in Southeast Asian combat situations. The Stellite Division of the Union Carbide Corporation, Kokomo, Indiana, is the major producer of a certain high temperature special purpose metal alloy which is used to fabricate combustion liners.

These combustion liners are manufactured and used by the manufacturer in the production of engines and spare parts therefor for the above-mentioned aircraft. These combustion liners are required to enable the engine to perform under the extremely high temperatures generated by the burning of jet fuel and the special purpose metal alloy produced by the Stellite Division is essential to the manufacture of such combustion liners. As the only other producer of this metal alloy is already supplying other priority requirements, there is no source with available capacity sufficient to enable the jet engine manufacturer to produce the necessary combustion liners to meet its required delivery schedules for these engines and spare parts therefor. As a result of the current work stoppage, existing stocks of this material supplied by the Stellite Division, and necessary to continue the manufacture of combustion liners, will shortly be exhausted. Since the manufacturer's production facilities for these engines are scheduled to operate at capacity and there is a need for uninterrupted production of combustion liners, there will result an unavoidable and irretrievable loss of essential engine and spare parts production to the detriment of our national safety.

(*b*) The Stellite Division of Union Carbide Corporation also produces turbine blades which are an essential part of the helicopter engines used to power the CH–53, CH–46 and SH3D helicopters. The CH–53 and CH–46 are used extensively by the Marines in combat operations in Southeast Asia. The SH3D is used in the Navy's antisubmarine warfare programs. The Stellite Division of Union Carbide Corporation produces

turbine blade castings which are later machined and supplied to the engine producer. There is no alternate source from which a sufficient number of these castings can be obtained in time to meet the requirements for scheduled engine production. If the current work stoppage at the Stellite Division continues the requirements of the General Electric Company will not be met, thus seriously interfering with the production of these engines and spare parts therefor, to the detriment of our national safety.

(*c*) The Stellite Division of Union Carbide Corporation also supplies certain first and second stage turbine blades and vanes which are critical production components of helicopter engines for the UH–1 (Huey) and CH–47 (Chinook) helicopters. These helicopters form a vital part of the Army's combat force in Southeast Asia and are constantly used to perform a wide variety of missions including the transportation of troops, supplies and artillery into close combat situations and actual fire support of ground troops. As a direct result of the strike at the Stellite Division of the Union Carbide Corporation at Kokomo, Indiana, there are insufficient numbers of blades and vanes being delivered to accomplish rebuilding of old engines which are required as replacements for worn and combat damaged engines in Southeast Asia, and also to continue manufacture of new engines as scheduled. Since no other production sources can meet these requirements for blades and vanes, the work stoppage has resulted in an unavoidable and irretrievable loss of essential engine production for aircraft needed in Southeast Asia to the detriment of our national safety.

(*d*) The work stoppage at the Stellite Division of Union Carbide Corporation, Kokomo, Indiana, will result in an irretrievable loss of time in the supply of weapons systems essential to the national defense and security of the United States including, particularly, combat operations in Southeast Asia. There do not now exist any other sources from which sufficient quantities of the necessary material and parts can be obtained in time to assure our ability to maintain sufficient levels of the aircraft and helicopter engines referred to above in support of our military necessities.

11. The strike, if permitted to continue, will imperil the national safety and thereby cause irreparable damage and injury to the United States, for which there is no adequate remedy at law.

CONCLUSIONS OF LAW

1. This action was properly instituted under the National Emergencies provisions of the Labor Management Relations Act, 1947 (29 U.S.C. 176–180).

2. The statutory provisions of Sections 206 to 208 (29 U.S.C. 176–178) of the Act and all requirements contained therein, were in all respects duly and legally complied with, both prior to and in the commencement of this suit by the United States of America.

3. The Court has jurisdiction of the subject matter of this suit and of the parties.

4. The strike on the part of the union defendants does not constitute an exercise of the right of the individual employees to quit their labor as set forth in Section 502 of the Act (29 U.S.C. 143).

5. The strike, if permitted to continue, will affect a substantial part of an industry engaged in trade, commerce, transportation, transmission and communica-

tion among the several States and with foreign nations, or engaged in the production of goods for commerce.

6. The strike, if permitted to continue, will imperil the national safety, and thereby cause irreparable injury to the United States of America, for which there is no adequate remedy at law.

7. Plaintiff, the United States of America, is entitled to the relief prayed for.

/s/ LEONARD P. WALSH,
*United States District Judge.*

DECEMBER 21, 1966.

U.S. GOVERNMENT PRINTING OFFICE: 1967